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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/439,314	11/12/99	SANDHU	G 95-0392.02

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IM22/0522

EXAMINER

DANG, T

ART UNIT	PAPER NUMBER
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1763

DATE MAILED:

05/22/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

# Office Action Summary

Application No.

09/439,314

Applicant(s)

SANDHU et al

Examiner

Thi Dang

Art Unit

1763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Mar 6, 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 41-69 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152).
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other: \_\_\_\_\_

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 102***

1. Claims 41-69 are rejected under 35 U.S.C. 102(e) as being anticipated by ***Kumagai***.

***Kumagai*** discloses a plasma processing system which a plasma ignition chamber (30) and a plasma etching chamber (11). ***Kumagai***'s apparatus meets the structural limitations of claimed plasma processing system as recited in claims 41-44, 50-59. The plasma etching device of ***Kumagai*** has the structural limitations of the claimed furnace assembly recited in claims 45-49. This etching device is capable of receiving a metal-containing gas (or, as applicants call it, "an induction blocker"), and it can be used for a processing a wafer using such gas. The claims contain language that is relating to the intended use of the claimed apparatus (e.g. the specific gases to be used), but such language does not define the claimed apparatus *structurally* over that of ***Kumagai***.

Claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danley*, 120 USPQ 528, 531 (CCPA 1959). "Apparatus claims cover what a device is, not what a device does ." (emphasis in original) *Hewlett - Packard Co . v. Bausch & Lomb Inc .*, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). Manner of operating the device does not differentiate the apparatus claim from the prior art. A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat.

App. & Inter. 1987).

### ***Response to Arguments***

2. Applicant's arguments filed 3/6/0 have been fully considered but they are not persuasive with regard to claims 41-62.

Applicant's arguments with regard to *In re Venezia* have been noted. It is true that the term "configured" denotes a structural limitation. However, the language of the present claims 41-62 beginning with the term "configured," without more, does not distinguish the claimed apparatus structurally over *Kumagai*'s apparatus because *Kumagai*'s apparatus also have structures that are "configured" to perform the same functions as recited in the claims.


### ***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner

should be directed to Ms. Thi Dang whose telephone number is (703) 308-1973.



**THI DANG**  
**PRIMARY EXAMINER**  
**GROUP 1700**

T.D.  
May 21, 2001